

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALFONSO HERNANDEZ,
Plaintiff,

vs.

No. CIV-14-964-KG-SCY

CITY OF ALBUQUERQUE,
a Municipal Entity Organized Under
the Laws of the State of New Mexico
and its subsidiaries the Albuquerque
the Albuquerque
Police Department,

ANDY FITZGERALD,
in his individual capacity as an security officer
employed by the Albuquerque Transit Dept.,
Security Div.,

AKEEM POWDRELL,
in his individual capacity as an security officer
employed by the Albuquerque Transit Dept.,
Security Div.,

DANIEL GALVAN,
in his individual capacity as an officer
employed by the Albuquerque Police Dept.,

AMY MARKWICK,
in her individual capacity as an officer
employed by the Albuquerque Police Dept.,
Defendants.

MOTION TO COMPEL RELEASE OF INFORMATION SOUGHT IN DISCOVERY
FOR IN CAMERA REVIEW (PERSONNEL, INTERNAL AFFAIRS/INTERNAL
INVESTIGATORY, DISCIPLINARY, TRAINING, AND HUMAN RESOURCES FILES)
ABSENT UNWARRANTED, OVERLY-BROAD CONFIDENTIALITY AND SECRECY
DEMANDS BY DEFENDANTS.

Plaintiff Alfonso Hernandez, through counsel, AEQUITAS LAW, LLC, (Anna C. Martinez) hereby moves the Court to compel the production of personnel, internal affair/internal investigatory, disciplinary, training, and human resources files maintained for each of the

individually-named Defendants in this case to the Court for *in camera* review absent the unnecessary confidentiality and secrecy presently sought by Defendants. In support of this Motion, Plaintiff states:

In his discovery requests to each individually-named Defendant and to Defendant City of Albuquerque, Plaintiff sought the personnel, internal affairs/internal investigatory, disciplinary, training, and human resource files for each individually-named Defendant, to wit: Defendant Daniel Galvan, Defendant Amy Markwick, Defendant Andy Fitzgerald, and Defendant Akeem Powdrell. All Defendants have agreed to provide much of the information, but only if Plaintiff will agree to draconian secrecy provisions that are not warranted in this case.

Plaintiff agrees, although the law is clear that he does not really have a choice but to so agree, that an *in camera* review of the information sought is necessary. The Court will then provide the information that it deems Plaintiff is entitled to, as set forth in *Denver Policemen's Protective Ass'n v. Lichentstein*, 660 F.2d 432 (10th Cir. 1981). Plaintiff does not seek any information that he would not be entitled to under *Denver Policemen's Protective Ass'n*. What Plaintiff does not agree to is the additional secrecy provisions called for in the proposed Unopposed Motion provided by all defense counsel to Plaintiff. The proposed Motion and the proposed Order thereon, is attached hereto as *Exhibit A*.

In their proposed Motion, Defendants demand that Plaintiff agree to the following conditions in addition to the *in camera* review:

- A. Plaintiff and his respective attorney of record agree to return the contents of the Internal Documents at the resolution of this lawsuit;
- B. Plaintiff and his respective attorney of record agree to purge all copies of the contents of the Internal Documents at the resolution of this lawsuit;
- C. Plaintiff and his respective attorney of record agree not to disclose or produce the contents of the Internal Documents to any non-party at any time, except for investigators, any experts and/or consultants retained by the parties in this matter;

- D. Plaintiff and his respective attorney of record agree not to attach any of the contents of the Internal Documents as exhibits to depositions or to motions filed with this Court unless the depositions or motions are sealed.
- E. Plaintiff and his respective attorneys of record agree to only use the information contained in Internal Documents for purposes of this lawsuit only and agree that this information is not to be used or disclosed in any other proceedings, litigation, depositions, and/or hearings which are not a part of Cause No. CIV-14-964 KG/SCY.
- F. Plaintiff or his respective attorneys agree that the dissemination of this information in violation of this protective order entitles Defendants' counsel to sanctions determined by the Court.

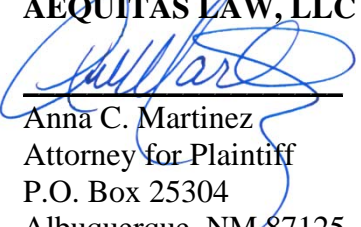
See *Exhibit A*. Plaintiff contends that these additional demands exceed the scope of the review provided for by *Denver Policemen's Protective Ass'n, Id.* Plaintiff requests that the Court order the production of the material sought for *in camera* review and that, if the Court deems additional confidentiality to be necessary that the Court order such provisions as it determines reasonable. Wholesale secrecy about the information contained in files about public employees sued for wrongdoing is, in Plaintiff's view, going too far.

The strictures of D.N.M.LR-CIV-26.6 are such that in order to comply with the twenty (20) day deadline set forth therein, Plaintiff has to file all Motions to Compel related to the City of Albuquerque, Daniel Galvan, and/or Amy Markwick today. Specifically, the Certificate of Service for the mailing of these Defendants' responses to Plaintiff's requests indicate that the responses were mailed April 27th. Including the three-day mailing calculation, the 20th day after the production of the responses is today. In order to comply with Plaintiff's obligation to attempt to resolve this matter without the need for Court intervention while also complying with LR-26.6, by separate filing, Plaintiff will ask the Court to stay the Defendants' deadline to respond to this Motion while Plaintiff determines if Defendants are willing to remove the additional, unnecessary secrecy and confidentiality provisions that Plaintiff objects to in this Motion.

Although, Plaintiff intends to attempt to resolve this matter informally, given the Defendants' joint agreement that *Exhibit A* is the proper way to proceed, Plaintiff believes that informal resolution is unlikely and, further, it is presumed that all Defendants, to wit: Defendant City of Albuquerque, Defendant Daniel Galvan, Defendant Amy Markwick, Defendant Andy Fitzgerald, and Defendant Akeem Powdrell oppose this Motion.

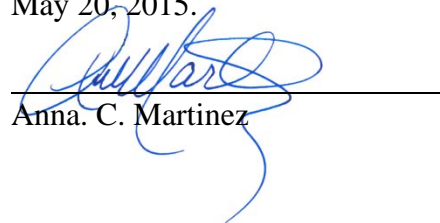
WHEREFORE, Plaintiff requests that the Court compel each Defendant to provide all of the information referred to in *Exhibit A*, which was sought by Plaintiff in written discovery for in camera review and that the Court thereafter determine if any or all of the confidentiality demanded by Defendants are necessary.

Respectfully submitted,
AEQUITAS LAW, LLC



Anna C. Martinez
Attorney for Plaintiff
P.O. Box 25304
Albuquerque, NM 87125
(505) 750-8005
anna@aequitas.pro

I hereby certify that the foregoing was delivered to all counsel of record via the Court's CM/ECF electronic filing and document delivery service on May 20, 2015.



Anna. C. Martinez